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OFFICE OF PETITIONS

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In re Patent No. 7,046,673 :
Ganmukhi, et al. :
Issue Date: May 16, 2006 : DECISION ON
Application No. 09/916,096 : REQUEST FOR RECONSIDERATION
Filed: July 26, 2001 : OF
Atty Docket No. FORE-9CONT II : PATENT TERM ADJUSTMENT

This is a decision on the correspondence entitled, "37 CFR 1.322 & 37 CFR 1.323 REQUEST FOR CERTIFICATE OF CORRECTION FOR USPTO AND/OR APPLICANT MISTAKE," filed November 20, 2008. The correspondence, with respect to the request to alter the revised patent term adjustment, will be treated as a petition under 37 CFR 1.705(d). Pursuant to petitioner's authorization, deposit account no. 50-1379 will be charged the required \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required. Patentees request that the revised patent term adjustment indicated on the patent be corrected from seven hundred seventy-eight (778) days to nine hundred and two (902) days. The present constructive petition appears to be filed on behalf of the assignee of record.

The request for reconsideration of patent term adjustment under 37 CFR 1.705(d) is **dismissed as untimely filed**.

Any request for reconsideration, must be filed within two months of the mailing date of this decision. Extensions of time under 37 CFR 1.136 are not permitted. See § 1.181(f).

On May 16, 2006, the above-identified application matured into U.S. Patent No. 7,046,673 with a revised patent term adjustment of 778 days. No request for reconsideration of the patent term adjustment indicated in the patent was filed within two months of the date the patent issued.

A request for reconsideration of the patent term adjustment indicated in the patent was not filed until November 20, 2008.

The relevant regulation, 37 CFR 1.705(d), provides that:

If there is a revision to the patent term adjustment indicated in the notice of allowance, the patent will indicate the revised patent term adjustment. If the patent indicates or should have indicated a revised patent term adjustment, *any request for reconsideration of the patent term adjustment indicated in the patent must be filed within two months of the date the patent issued* and must comply with the requirements of paragraphs (b)(1) and (b)(2) of this section. Any request for reconsideration under this section that raises issues that were raised, or could have been raised, in an application for patent term adjustment under paragraph (b) of this section shall be dismissed as untimely as to those issues. (*emphasis added*).

By the express provisions of 37 CFR 1.705(d), a request for reconsideration of patent term adjustment must be filed within two months of the date the patent issued. It is undisputed that no such request for reconsideration was filed by July 16, 2006, the date two months from the date this patent issued, May 16, 2006.

35 U.S.C. 154, requires the Office to provide the applicant one opportunity to request reconsideration of any patent term adjustment determination made by the Director, authorizes the Director to establish the procedures for requesting such reconsideration. Those procedures¹ include pursuant to 37 CFR

¹ 35 U.S.C. § 154(b)(3) provides that the USPTO shall: (1) prescribe regulations establishing procedures for the application for and determination of patent term adjustments under 35 U.S.C. § 154(b); (2) make a determination of any patent term adjustment under 35 U.S.C. § 154(b) and transmit a notice of that determination with the notice of allowance under 35 U.S.C. § 151; and (3) provide the applicant one opportunity to request reconsideration of any patent term adjustment determination. Pursuant to the mandate and authority in 35 U.S.C. § 154(b)(3), the USPTO promulgated 37 C.F.R. § 1.705, which provides that: (1) the notice of allowance will include notification of any patent term adjustment under 35 U.S.C. § 154(b) (37 C.F.R. § 1.705(a)); (2) any request for reconsideration of the patent term adjustment indicated in the notice of allowance (except as provided in 37 C.F.R. § 1.705(d)) must be by way of an application for patent term adjustment filed no later than the payment of the issue fee and accompanied by (inter alia) the fee set forth in 37 C.F.R. § 1.18(e) (37 C.F.R. § 1.705(b)); and (3) if the patent indicates or should have indicated

1.705(d) setting a two-month period for filing a request for reconsideration of the revised patent term adjustment indicated in the patent.

The Office provided notice that petitions under 37 CFR 1.182 and 1.183 or requests for certificate of corrections under 35 USC 354 and 37 CFR 1.323 or 35 U.S.C. 255 and 37 CFR 1.324 are not substitute *fora* to obtain reconsideration of a patent term adjustment determination indicated in a notice of allowance if applicant fails to submit a request for reconsideration within the time period specified in §1.705(b) or to obtain reconsideration of a patent term adjustment determination indicated in a patent if a patentee fails to submit a request for reconsideration within the time period specified in §1.705(d). See 69 Fed. Reg. 21704, 21707 (April, 22, 2004).

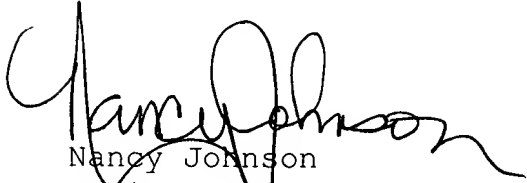
No error in the printing of the patent has been shown. The patent term adjustment indicated on the patent reflects the Office's determination of patent term adjustment shown in the PAIR system for this application. 37 CFR 1.705(d) provides the sole avenue before the Office for requesting reconsideration of the Office's determination of patent term adjustment indicated in the patent. Moreover, § 1.705(d) states that "any request for reconsideration of the patent term adjustment indicated in the patent must be filed within two months of the date the patent issued and must comply with the requirements of paragraphs (b)(1) and (b)(2) of this section." Since the request was not filed within two months of the issue date of the patent, the request is properly **dismissed as untimely filed**.

As a one time courtesy, a copy of this decision will be mailed to the address listed on the petition/proposed certificate of correction. If a change in correspondence address is desired, appropriate documents should be filed.

After the mailing of this decision, the application will be referred to Certificates of Correction Branch for consideration of the remaining request in the proposed Certificate of Correction filed on November 20, 2008.

a revised patent term adjustment, any request for reconsideration of the patent term adjustment indicated in the patent must be filed within two months of the date the patent issued.

Telephone inquiries specific to this matter should be directed to Shirene Willis Brantley, Senior Petitions Attorney, at (571) 272-3230.



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